EXHIBIT I

Not Reported in F.Supp., 1994 WL 75244 (N.D.Ill.)
(Cite as: Not Reported in F.Supp.)

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Wilson v. Chicago Transit Authority
N.D.Ill.,1994.
Only the Westlaw citation is currently available.

United States District Court, N.D. Illinois, Eastern Division.

Karen A. WILSON, Plaintiff,
v.
CHICAGO TRANSIT AUTHORITY, and City of Chicago, Defendants.

No. 93 C 5461.

March 9, 1994.

MEMORANDUM OPINION AND ORDER

PLUNKETT, District Judge.

***1** In the summer of 1992, Karen Wilson, a resident of Michigan, was injured aboard a CTA bus while visiting Chicago with some friends. She has since sued the CTA and the City for negligence. The Defendants have moved to dismiss Ms. Wilson's Complaint because she did not notify the CTA of her claim as required by law and because her damages can not possibly equal $50,000.00. Upon careful consideration of the issues raised, we grant the motion for the reasons stated below.

Background

The facts of this case as plead in the Complaint, which we must accept as true for purposes of this motion, are as follows. On June 27, 1992, Plaintiff was a passenger on a CTA bus. After the bus made a complete stop at Michigan Avenue and Rush Streets, the driver announced the stop. When she heard the driver announce the stop, Ms. Wilson stood up. However, as soon as she was in an upright position, the bus lurched forward, causing her and several other passengers to lose their balance. Plaintiff fell and was injured.

Plaintiff filed her one-count Complaint on April 16, 1993, in the Eastern District of Michigan. The district judge there transferred the case to this district, and it was assigned to this court.

The Complaint pleads but one cause of action, negligence, against the CTA and the City of Chicago. Plaintiff's alleges that the Defendants owed a duty of reasonable care to provide passengers with safe ingress and egress. No facts beyond those described above are alleged, and no exhibits are attached.

Discussion

On a motion to dismiss, the court views the allegations of the complaint as true, along with reasonable inferences therefrom, and views these in the light most favorable to the plaintiff. *Dawson v. General Motors,* 977 F.2d 369, 372 (7th Cir.1992); *Powe v. Chicago,* 664 F.2d 639, 642 (7th Cir.1981) . A complaint should not be dismissed with prejudice unless it appears beyond doubt that the plaintiff is unable to prove any set of facts consistent with the complaint which would entitle the plaintiff to relief. *Bartholet v. Reishauer A.G.,* 953 F.2d 1073, 1078 (7th Cir.1992). Unless otherwise provided by Rule 9 of the Federal Rules of Civil Procedure, facts need not be plead with particularity. *Leatherman v. Tarrant County Narcotics and Intelligence Unit,* 113 S.Ct. 1160, 1163 (1993). However, we need not credit conclusions of law. *See Reichenberger v. Pritchard,* 660 F.2d 280, 282 (7th Cir.1981); *Mescall v. Burrus,* 603 F.2d 1266, 1269 (7th Cir.1976). *See also* 5A Charles Wright and Arthur Miller, *Federal Practice and Procedure,* § 1357 at 311-18 (2d ed. 1990). Nevertheless, a plaintiff

must allege sufficient facts to outline the cause of action, proof of which is essential to recovery. *Ellsworth v. Racine,* 774 F.2d 182, 184 (7th Cir.1985), *cert. denied,*475 U.S. 1047 (1986) (citations omitted).

I. *Section 41 of the Transit Act*

Defendants first argue that this case must be dismissed because the Plaintiff did not plead compliance with section 41 of the Transit Act. 70 ILCS 3605/41 (West 1992). Section 41 requires that a plaintiff file notice within six months of an accident "in the office of the secretary of the Board and also in the office of the General Attorney for the Authority." If notice is not filed as required, section 41 provides that "any such civil action commenced against the Authority shall be dismissed. " 70 ILCS 3605/41 (West 1992).

***2** Defendants argue that section 41 is strictly construed. Indeed, it is true that when the word " shall" is included in a legislative provision, Illinois courts generally have held that the requirement is mandatory. *See, e.g., People v. Williams,* 577 N.E.2d 762, 765 (Ill.1991). Thus, Illinois courts have repeatedly held that the plaintiff has the burden of strictly complying with the requirements of section 41. *See, e.g., Niziolek v. CTA,* 620 N.E.2d 1097, 1101 (Ill.App.Ct.1993) (rejecting " substantial compliance" argument made by plaintiff); *Sanders v. Chicago Transit Authority,* 581 N.E.2d 211, 213 (Ill.App.Ct.1991). Because the notice requirements of section 41 are a mandatory prerequisite to filing a cause of action, compliance must be plead in the Complaint. *See, e.g., Hayes v. CTA,* 92 N.E.2d 174, 176 (Ill.App.Ct.1950).

Defendants move to dismiss on the grounds that: (1) the Complaint does not plead compliance with section 41; and (2) even if it did, no notice was received under the statute. Defendants support the second argument by attaching affidavits of CTA officials, and asks that we grant them summary judgment on this issue. Plaintiff responds by arguing that the CTA should be estopped from raising section 41. In support of that argument, the Plaintiff attaches all kinds of documents not attached to or made a part of the Complaint that relate to the conduct of the CTA claims representation and her correspondence with him.

Of course, we cannot consider any of this material at present.[FN1] Under Fed.R.Civ.P. 12(b)(6), we may not consider materials beyond the pleadings, but the court is authorized to convert a motion to dismiss to one for summary judgment upon adequate notice to the parties. In order to consider Plaintiff's estoppel claims, we would have to convert this motion.

Equitable estoppel has been applied to preclude the CTA from raising a plaintiff's failure to comply with section 41 if the plaintiff "was led to detrimentally rely upon the conduct or statements of the [claims representative] and ... such reliance was in good faith." *Niziolek v. CTA,* 620 N.E.2d 1097, 1102 (Ill.App.Ct.1993) (quoting *Pothier v. CTA,* 606 N.E.2d 531, 533 (Ill.App.Ct.1992)). *See also Searcy v. CTA,* 497 N.E.2d 410, 413 (Ill.App.Ct.1986). However, equitable estoppel has also been frequently rejected in this setting, particularly where the plaintiff was represented by an attorney. *See, e.g., Niziolek,* 620 N.E.2d at 1103; *Sanders,* 581 N.E.2d at 214 (equitable estoppel not available to a plaintiff represented by an attorney who was not told he needn't comply with section 41 by CTA employees); *Murphy v. CTA,* 548 N.E.2d 403, 406 (Ill.App.Ct.1989) (same). A number of factors, including whether the plaintiff was represented by an attorney and the particular conduct of CTA personnel, are central to this analysis: our review of the cases on estoppel and section 41 indicate that whether the CTA should be estopped from claiming noncompliance with section 41 is an issue of fact that is generally to be decided by the jury on the particular circumstances of each case. *Niziolek,* 620 N.E.2d at 1102.

***3** Thus, we are in a bit of a sticky wicket here. We have before us much of the information we would need to address the issue of compliance with section 41 on a summary judgment basis. Perhaps all that is lacking is an affidavit from the Plaintiff.

However, we may not consider these materials without notice to the parties and thus, substantial delay. Further, our cursory review of these materials raise some doubts about the merits of a summary judgment motion.

We have essentially two options before us. First, we could simply convert this motion to a motion for summary judgment, ask for statements of uncontested facts from the parties, and proceed on that basis. Second, we could dismiss the Complaint without prejudice for failure to allege compliance with section 41 or facts from which we could reasonably infer that estoppel applies and give the Plaintiff time to file an amended complaint.

We believe that the latter course best serves the parties and the interests of justice. By dismissing the Complaint without prejudice, Plaintiff is given an opportunity to add the necessary allegations of fact concerning her estoppel claim. Then, after a careful review of the cases cited above, the Defendants can determine whether a motion for summary judgment is, in good faith, warranted by the facts alleged by the Plaintiff.[FN2] Such a process is, we believe, the most efficient way to resolve this issue.

II. *The $50,000 Jurisdictional Amount*

Even though we dismiss the Complaint under 12(b)(6), we have an obligation to address the jurisdictional question presented by the Defendants. They argue that because Ms. Wilson only submitted medical bills totalling $92.50 and sought a couple of hundred dollars from the CTA in settlement before she consulted a lawyer, her claim cannot possibly be worth the jurisdictional minimum.

We may dismiss a diversity lawsuit for lack of subject matter jurisdiction is it appears "to a legal certainty that the claim is really for less than the jurisdictional amount...." *St. Paul Mercury Indemnity Co. v. Red Cab Co.,* 303 U.S. 283, 288-89 (1938). Thus, if "on the face of the pleadings ... or, if from the proof,"*id.,* the court is satisfied that the plaintiff cannot recover the jurisdictional amount, the Complaint may be dismissed.

The Complaint itself certainly does not support an inference that Ms. Wilson is entitled to recover in excess of $50,000.00. It does not allege any permanent injury. To the contrary, it seeks compensation for items like "Loss, use and enjoyment of Plaintiff's visit to Chicago...." (Compl. at 6-7.) Further, though we may consider affidavits and other material outside the pleadings on this issue, properly presented under 12(B)(1), Charles A. Wright and Arthur R. Miller, *Federal Practice and Procedure,* § 1350 at 213 (2d ed. 1990), Plaintiff has presented no evidence that Ms. Wilson's claims are of significant value. In her Response in Opposition, Plaintiff simply argues that Ms. Wilson subsequently discovered that her injuries were more severe, endured two surgeries and expects to have to endure further treatment in the future. Plaintiff provides no support for these allegations, but states that "[i]t is Plaintiff's intention to present evidence at trial of significant ongoing and permanent injuries she suffers as a result of the incident which is the subject of this case." (Resp. in Opp. at ¶ 27.)

***4** This is simply insufficient. Based upon either the face of the Complaint or the proofs as presented, we are satisfied to the point of a legal certainty that Plaintiff is not entitled to recover the jurisdictional minimum. Counsel's unsupported allegations about surgeries and the like are simply without value as an article of proof. *See Rosenboro v. Kim,* 994 F.2d 13, 17-18 (D.C.Cir.1993) (noting the importance of medical evidence such as a physician's report to support claims of injury in borderline cases).[FN3]

Defendants have presented the only proof on this issue, and it dispels any doubts that may have arisen on the face of the Complaint concerning the jurisdictional minimum. Thus, we must also dismiss this case without prejudice for lack of subject matter jurisdiction.

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Conclusion

We are puzzled by this case on two levels. First, the case does not appear to belong in federal court. Second, the District Court in Michigan found it had no jurisdiction, then proceeded to transfer the case. By what process that was done, we are unsure.

Regardless, we dismiss the Complaint without prejudice for two reasons. First, we find that, upon the face of the Complaint and the proofs as submitted that there is a legal certainty that Plaintiff is not entitled to recover the minimum jurisdictional amount. Thus, we lack subject matter jurisdiction. Second, Plaintiff has failed to plead compliance with section 41 of the Transit Act or facts from which a reasonable inference of equitable estoppel may arise. Should Plaintiff wish to amend the Complaint to correct these deficiencies, she may do so within sixty days.

FN1. While Defendants have framed their motion in terms of Fed.R.Civ.P. 12(b)(1), under which we can consider material outside of the pleadings, *see*Charles A. Wright and Arthur R. Miller, *Federal Practice and Procedure,* § 1350 at 213 (2d ed. 1990), the question of whether Plaintiff has stated a claim under Illinois law is more properly addressed under Rule 12(b)(6).

FN2. Aside from our initial skepticism, we express no opinion as to the merits of such a motion, and neither encourage nor discourage such a filing. However, we caution Defendants, as we would any litigant, against filing a motion for summary judgment, which is quite time-consuming and expensive, unless it is clearly warranted by the application of the case law to the facts presented herein.

FN3. As we cautioned the Defendants against filing an unwarranted motion for summary judgment, we also warn the Plaintiff against refiling this case at all without sufficient proof that she may recover the jurisdictional minimum in damages. Should either party disregard these warnings, this court will initiate Rule 11 proceedings *sua sponte.*

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